IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WA.No. 2280 of 2007

APPELLANT: PETITIONER:

V.K. PATHUMMA BEEVI (RETIRED UPSA),
RVLPS KURUVILASSERY, VELUTHAKADUVIKARAN HOUSE,
KURUVILASSERY P.O., MALA, TRICHUR.

BY ADV. SMT V.P. SEEMANDHINI (SENIOR ADVOCATE)
AND ADV. SRI.M.R.ANISON

RESPONDENTS: RESPONDENTS:
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1. STATE OF KERALA,
REP. BY THE PRINCIPAL SECRETARY (FINANCE),
FINANCE (PWCA) DEPARTMENT, SECRETARIAT, TRIVANDRUM

2. THE ACCOUNTANT GENERAL (A & E),
KERALA, TRIVANDRUM.

3. THE ASST. EDUCATIONAL OFFICER, MALA.

4. THE MANAGER,
AMLPS, MARAKKAD, ASHTAMICHIRA P.O.,
(VIA) CHALAKUDY, TRICHUR.

BY GOVT PLEADER SRI K. SANDESH RAJ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 27/09/2007, THE COURT ON 08/10/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & A.K. BASHEER, JJ.

Writ Appeal No 2280 of 2007

Dated: 8th October 2007

Radhakrishnan, J.

Petitioner had retired from service on 31.03.2001 as L.P.S.A. While calculating the pensionary benefits service prior to 1.6.1971 was not reckoned since service put in by her prior to that date was pre resignation period. Petitioner had resigned from the post of L.P.S.A on 1.6.1971 and had not rejoined service within the admissible rejoining time and there was a break of 45 days before the next appointment. As per the service certificate pasted at page 9 of the service book, petitioner had resigned from service on 1.6.1971 from A.M.L.P.S, Marakkad after completing the nine months and 26 days of service. Therefore service from 7.2.1970 to 1.6.1971 was not reckoned as qualifying service for pension. Petitioner is aggrieved by the said action of the respondent and has approached the Government. Government rejected the petitioner's request by Ext P4 order stating that her pre resignation period could not be considered for calculation of qualifying service for pension under Rule 29 Part III of the Kerala Service Rules.

Aggrieved by the same petitioner has approached this court. Learned single judge found no infirmity in the order passed by the Government and rejected the writ petition. Aggrieved by the same this appeal has been preferred.

2. Senior Counsel Smt V.P. Seemanthini submitted that appointment of the petitioner from 7.8.1970 to 1.6.1971 was already approved and therefore there is no justification in not reckoning the approved service for the purpose of granting pension. Further, counsel submitted that in fact there was no resignation though the Manager had obtained some signed papers from the petitioner and the same were utilised to show that she had resigned from service. Counsel submitted that those facts were not properly adverted to by the authorities including the learned single judge.

3. We have perused Ext P3 service certificate which was issued in a statutory form. It clearly shows that the petitioner had resigned on 1.6.1971. She had signed the statutory form as well. It is also stated in the said form that the said details have been entered in the service book as well. The stand of the petitioner is that the noting made in Ext P3 is not correct and that she had not actually resigned. This court at this distance of time is not justified in examining whether the petitioner had resigned on 1.6.1971 or not. No materials have been placed before us to show that in fact petitioner

had not resigned from the post of L.P.S.A on the said date. On the contrary, Ext P3 document would show otherwise. Statutory form was signed by the petitioner as well as the Assistant Educational Officer which would indicate that she had resigned on 1.6.1971. If she had resigned then the pre resignation period cannot be counted as qualifying service for pension. Rule 29 of Part III K.S.R deals with resignation and dismissals. The said rule is extracted below for easy reference.

> 29. Resignation and Dismissals.- (a) Resignation of the Public Service or dismissal or removal from it, entails forfeiture of past service.
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> (b) Resignation of an appointment to take up another appointment the service in which counts is not resignation from public service.
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> Note:- The break between the two appointments should not exceed the joining time admissible under the service rules plus the public holidays.

We may in this connection also refer to clause (a) of Rule 29 and foot note of the said rule. Person thrown out of service for want of vacancy, ousted from service, retrenchment etc. will count such service in full for pensionary benefits irrespective of length of service prior to 10.1.1978 (G.O.(P) 220/87/Fin dated 10.3.1987). Counsel for the petitioner sought the benefit of the said G.O as well. First of all no such claim was made in the writ petition. Even otherwise the said G.O cannot be applied to the case of the

petitioner since she had not established that she was thrown out of service for want of vacancy. On the other hand facts would indicate that she had resigned on 1.6.1971. Since she had resigned from service it entails forfeiture of her past service and therefore pre resignation period could not be counted for the purpose of pensionary benefits under Rule 29(a). In such circumstances, we find no infirmity in the order passed by the Government calling interference by this court. Appeal therefore lacks merits and the same would stand dismissed.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-
A.K. BASHEER
Judge

08/10/2007
en/

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